

**AGREEMENT FOR CARD SERVICES
BETWEEN
DFS SERVICES LLC
AND
THE STATE OF NORTH CAROLINA**

In this Agreement, the words “you” and “your” mean the State of North Carolina, as represented by the State Controller and the State Treasurer, or where appropriate under an Agency Participation Agreement, a Participating Entity; the words “we”, “our”, “us”, “DFS” and “Discover® Network” refer to DFS Services LLC; “Business Day” refers to Monday through Friday except when we are closed for business; “Card” means: (i) a valid payment card or access device displaying a Discover® or Discover Network logo, service mark or acceptance mark identified in the Operating Regulations, as defined below, or as otherwise approved by us; or, (ii) the Card Account if the Card is not present at a physical location; “Card Account” means the account represented by a unique account number which the Cardholder may use as permitted by the Issuer; “Cardmember” or “Cardholder” means a person to whom a Card has been issued and/or any authorized user of a Card; “Effective Date” is February 1, 2008; “Issuer” means a third party that we permit to issue Cards; “Merchant Account” means the 15 digit account number beginning with 6011 assigned by us for your use in connection with Card acceptance; “Operating Regulations” refers to our Merchant Operating Regulations; and “Sales Data” means evidence of Card transactions, whether in paper or electronic form, that is received by us in the form and format that we specify. “Agreement” or “Master Agreement” means the terms and conditions of this document, the accompanying schedules, and any exhibits; “Participating Entity” means any State Entity or State Related Entity that has entered into an Agency Participation Agreement, in the form of Schedule C to this Agreement; and “Establishment” means the individual physical location(s) where a Participating Entity accepts the Discover Network Card as payment. Unless the context clearly indicates otherwise, words used in the singular include the plural and words used in the plural include the singular.

THIS AGREEMENT GOVERNS YOUR ACCEPTANCE OF CARDS. This Agreement supersedes any other agreement concerning Cards and is made pursuant to negotiations entered into with us on behalf of the State and Participating Entities by the State Controller and incorporates the terms and conditions specified herein, including those of the accompanying Exhibits. The Agreement thus is composed of the following parts:

- Agreement for Card Services Between DFS Services LLC and The State of North Carolina
- Exhibit A – Discover Network Merchant Operating Regulations
- Exhibit A1 – Dispute Rules Manual
- Exhibit B – Merchant Fee and Other Fees
- Exhibit C – Agency Participation Agreement

If there is a conflict among or between any of these documents, the order of precedence for controlling language is first, the Agreement for Discover Network Card Acceptance, second, Exhibit B, Merchant Fee, third Exhibit C, Agency Participation Agreement and fourth Exhibit A, Discover Network Merchant Operational Regulations.

1. Acceptance of Cards. You agree to accept Cards at your locations in payment for purchases of goods and services consistent with the policies issued by the State Controller. Each Participating Entity which has signed an Agency Participation Agreement is liable for all its Establishments under this Agreement and responsible for complying with the terms of this Agreement as it has been incorporated into a separate Agency Participation Agreement. You agree to follow the procedures in this Agreement and in our Operating Regulations concerning your acceptance of Cards and the preparation of Sales Data. Please refer to the Operating Regulations for specific details regarding how you may accept Card sales. You may not institute or adopt any practice that discriminates or provides unequal treatment for users of the Card versus any other card products that you accept.

2. Operating Regulations. The Operating Regulations are incorporated into this Agreement as Exhibit A. The Operating Regulations are an integral part of this Agreement and contain procedures which you must follow in connection with acceptance of Cards. We may change the Operating Regulations from time to time by sending you written notice thirty (30) days in advance. However, certain changes may become effective immediately for security reasons. If there is any conflict between this Agreement and the Operating Regulations, the terms of this Agreement will govern.

3. Authorization and Sales Data Submission.

(a) Authorization. For each individual Card sale, you must obtain authorization from us prior to making the Card sale. If you accept a Card sale without obtaining authorization from us, the Card sale is subject to Chargeback to you. Please refer to the Operating Regulations for specific information on obtaining authorization.

b. Submission of Sales Data. You agree to transmit Sales Data to us each Business Day and by the transmission deadline, each of which is described in the Operating Regulations. Additional requirements for Card sales by mail, telephone and Internet are described in Section 4 below.

4. Telephone, Mail Order and Internet Card Sales. You agree to obtain our prior approval before accepting any Card sales over the Internet. You agree to comply with our data security and encryption requirements in the Operating Regulations, including our procedures for Card transactions over the Internet and Card transactions on your website. Any Card sales over the Internet that do not comply with this Agreement or the Operating Regulations are subject to Chargeback. You may accept a Card for a telephone or mail order sale if you follow the procedures in the Operating Regulations.

(a) Documentation of Card Sales. For each Card sale by Internet, mail or telephone, you must obtain the following information from the Cardholder: Cardholder name, Card Account number and Card expiration date.

(b) Transmission of Sales Data. For each Card sale by Internet, mail or telephone, Sales Data shall be transmitted to us using an electronic means of transmission.

5. Special Industry Requirements. If you accept Card sales for recurring billing or installment sales transactions with Cardholders, please refer to the Operating Regulations for detailed requirements for these transactions, including the format for authorization requests. If you are a merchant that operates “customer activated terminals (CAT)”, please refer to the Operating Regulations for a definition of CAT and specific procedures governing acceptance of Card transactions on these terminals.

6. Card Present Card Sales. For your Card sales where the Cardholder appears at your location and presents a Card for purchase (“Card present” sales), if any, the Cardholder or authorized user of a Card must sign the Sales Data in your presence and the signature must be reasonably similar to the signature appearing on the signature panel of the Card. Please refer to the Operating Regulations for additional requirements for Card transactions where the Card is present.

7. Credits for Returns. You may establish your own policy concerning refunds, and you agree to advise Cardholders, in advance of any Card sale, of this policy. Consult the Operating Regulations for the procedures you must follow so that we will honor your return policy and the Credits that you issue.

8. Settlement of Transactions.

(a) As used in this Agreement, the term “Settlement” means the procedure by which we will reimburse you for the amount of each valid Card sale for which you submit Sales Data to us that represents a purchase from your establishment with a Card, minus an amount equal to the sum of any Chargebacks, any credits to Cardholders that you submit to us, and other fees as defined in Exhibit B, if applicable, and plus or minus adjustments that we make to reconcile or correct errors in your Sales Data.

(b) The timing for your Settlement payments is described in the Operating Regulations. Your terminals or point-of-sale devices must be programmed with the Merchant Account number that we assign to you if you are to receive Settlement payments for Card sales. You are responsible for the programming of your terminal(s) to accept Card sales. If a third party programs your terminal(s), you are responsible for such party’s actions and omissions in connection therewith, including, without limitation, any payment of your Settlement amounts to the incorrect party. Within seven (7) days following the completion of terminal programming services, you agree to confirm the receipt in your Settlement Account of Settlement amounts for Card sales accepted by you. If you do not receive Settlement amounts for Card sales in accordance with the Agreement and Operating Regulations, you must contact us within sixty (60) days. You must comply with each of the terms and conditions in this Agreement and in the Operating Regulations, before you will receive a Settlement payment for a Card sale. Consult the Operating Regulations for other important Settlement terms and conditions.

(c) Any settlement amount where the chargebacks, returns and applicable adjustments exceed valid Card Sales will be invoiced to you. All such invoices shall be due and payable by you within thirty (30) days of receipt of a correct invoice. You agree that your Settlement account may be debited for Chargebacks, returns and applicable adjustments and for no other reason. In the event that such invoice remains unpaid beyond said thirty (30) day period, you agree to pay us any amounts owed on demand.

(d) You do not release us from any claims, causes of actions and defenses arising from or related to any Settlement amount, whether or not you have disputed the settlement amount in writing, until you and we have resolved any disputes to our mutual satisfaction.

(e) If you believe you have received an overpayment or an underpayment, you agree to notify us in writing within 90 days of the date of the payment. However, in no event shall your failure to notify us within 90 days be construed as a waiver or release for amounts paid or not paid correctly nor shall we be able to suspend settlement to you in the event of a dispute over an underpayment, overpayment or the adequacy of sales data.

(f) You cannot indemnify us and hold us harmless against all claims, damages and lawsuits including those arising out of Card Transactions with respect to which you do not submit Sales Data to us, or for Sales Data that you fail to submit to us by the submission deadline.

(g) We will not change the schedule for Settlement timing without providing you ninety (90) days prior written notice.

9. Merchant Fee and Other Fees. In consideration for your participation in the Card program, you agree to pay us fees in the amounts specified in Exhibit B. The fees payable by you consist of some or all of the following: (a) a percentage of the Card sales accepted by you or a fee for each Card sale (in each case, "Discount"). If a percentage applies, it will be multiplied by either Net Card Sales or Gross Card Sales, as indicated in Exhibit B and as defined in the Operating Regulations. If a fee for each Card sale ("Per Card Sale Fee") applies, it will be multiplied by the total number of your Card sales, as defined in the Operating Regulations; (b) a Per Transaction Fee, as defined in the Operating Regulations; (c) Submission Error Fees, including, without limitation, the Voice Usage Fee and Stale Transaction Fee in the amount indicated above and as defined in the Operating Regulations. The fees described in (a) and (b) are collectively referred to as the "Merchant Fee". If the amount of the Discount varies depending on the type of Card product, the amount of Discount for each type of Card product will be indicated in Exhibit B. The Discount for Card products other than Credit products is calculated by multiplying the Credit Discount by the amount indicated next to the product type. To collect the fee, we will send you an invoice for the amount of the fee within twenty (20) days of the last business day of each month. All such invoices shall be due and payable by you within thirty (30) days of receipt of a correct invoice. In the event that such invoice remains unpaid beyond said thirty (30) day period, you agree to pay us any amounts owed on demand unless the matter is in dispute. Any amounts owed to us which cannot be paid by the foregoing means shall be due and payable by you on demand. You may elect to levy a surcharge or convenience fee. However, the surcharge or fee shall not be more than that charged for the use of any other card brand.

10. Billing Inquiries. You agree to follow the procedures set forth in the Operating Regulations with respect to the notices of Cardholder disputes and billing inquiries that you receive from us. Nothing in this paragraph shall suggest that you must submit to arbitration of disputes or that the Operations Regulations or Dispute Manual shall take precedence over this Agreement.

11. Chargeback Rights. Under certain circumstances, we may return a Card sale to you unpaid, or we may return a previously paid Card sale to you for repayment to us. If we have already paid you, we will send you an invoice for the amount(s) in question, said invoice(s) to be due and payable within thirty (30) days of receipt of a correct invoice(s). In the event that such invoice remains unpaid beyond said thirty (30) day period, you agree to pay us any amounts owed on demand. These returned charges are called "Chargebacks". If you do not follow all the terms of this Agreement and the Operating Regulations when making a transaction with a Card, or if a Card sale which is the subject of a billing dispute is subject to Chargeback as specified in this Agreement or Operating Regulations, we may refuse to pay you for the Card sale only after any dispute is resolved.

12. Retention of Records. You agree to keep an original copy of all Sales Data, mail/telephone order forms, the documentation required in the Operating Regulations and other related document(s) for no less than three hundred and sixty five (365) days from the Card transaction date or one hundred and eighty (180) days from the date of submission of Sales Data, whichever is later. You agree to provide us with a copy of any Sales Data, mail/telephone order forms and the documentation required in the Operating Regulations, within twenty-two (22) calendar days of our request. We agree to keep records of transactions and dealings with you or a Participating Entity under this Agreement for three years from the date of the transaction.

13. Term and Termination. This Agreement is effective as of February 1, 2008. This Agreement remains in full force and effect until terminated as provided in this paragraph. Either party may terminate this Agreement at any time by giving the other sixty (60) days' prior written notice. If you terminate this Agreement, you shall notify us in writing sent certified mail, return receipt requested, to the address specified in the Operating Regulations. We may terminate this Agreement with thirty (30) days notice if Card sales transacted by you are irregular as defined as in excess of 10% Chargebacks, the goods or services sold by you or your business practices violate any U.S. federal, state or local law, statute or regulation (e.g. aiding, facilitating or offering Internet gambling services; establishing quasi-cash, credits or monetary value of any type that may be used for Internet gambling; the sale of counterfeit merchandise; the sale of alcohol, tobacco or firearms to minors; or any other illegal purpose), or there are documented security concerns regarding Card sales by any of your establishment and you fail to correct these concerns within a commercially reasonable time after notification. You agree to accept Cards and follow the terms of this Agreement until the termination is effective. The terms in this Agreement and Operating Regulations governing the acceptance of Cards, transmission and processing of Sales Data and mail/telephone order forms and Settlement will continue to apply even after the termination of this Agreement, until all Card transactions made prior to such termination are settled or resolved. Upon termination of this Agreement you agree to immediately send us all Sales Data, mail/telephone order forms and documentation required in Section 4 not previously submitted to us for any Card sales made up to the date of termination. We are not liable to you for any consequential damages you may suffer as a result of our unilateral termination of this Agreement.

14. Factoring. You agree that you will not factor any Card sales. See the Operating Regulations for complete details regarding what constitutes factoring and the liability you incur if you factor any Card sale.

15. Performance of Duties. Neither party shall be liable for its failure to perform under this Agreement if such failure arises out of causes beyond the control and without the fault or negligence of such party. Such causes may include, but are not limited to, acts of God, fire, wars or strikes.

16. Notices. You agree that you will send any notice to us that is required by this Agreement or by the Operating Regulations to the address specified in the Operating Regulations by certified mail, return receipt requested. We agree that we will send any notice to you that is required by this Agreement or the Operating Regulations by certified mail, return receipt requested to the address provided below:

David C. Reavis
Contract Administrator
1410 Mail Service Center
Raleigh, NC 27699-1410

17. Captions. The captions used in this Agreement are for reference only and will not be interpreted to limit or define the text of this Agreement.

18. Miscellaneous. If any part of this Agreement is not enforceable, the remaining provisions still remain valid and enforceable. Neither Party shall have waived any of its rights under this Agreement unless it agrees to do so in writing. Each party agrees to comply with all applicable laws and regulations in connection with the Card program and this Agreement.

19. Your initial Merchant Fee is indicated in Exhibit B. We may adjust the Merchant Fee upon ninety (90) days prior written notice to you.

20. Miscellaneous

(a) Confidentiality.

- (i) Each party must keep confidential and not disclose to any third party any information that it receives from the other party that is not publicly available or is marked confidential and that comports with exceptions to the North Carolina public records statute, N.C. Gen. Stat. § 132-1 et seq. Each party agrees to advise its employees, agents, officers, directors, principals and employees, and any subcontractors having access to confidential information under this Agreement of the obligation to keep such information confidential. Each party agrees to use commercial best efforts to safeguard and protect any information it receives from the other party during the performance of Agreement from loss, destruction or erasure.
- (ii) Care of Information. We agree that you may exercise your rights under this subparagraph as necessary or proper to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code

of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

- (iii) These confidentiality provisions are exclusive and complete and shall not be superseded or augmented by any other confidentiality provisions in any other part of this Agreement, including Exhibit A.

(b) Proprietary Rights and Permitted Uses. Neither party has any rights in the other party's Marks, nor may one party use the other party's Marks without its prior written consent except that we may use your name, address, including your website addresses and URLs in any internal media sent to Cardmembers or merchants to make them aware of your acceptance of Cards (such as Cardmember statement messaging) at any time. You may use our Marks (e.g. decals, approved logo sheets) at your Establishments, including on your websites, at your locations or in any promotional materials. The names, addresses, account numbers, Card Identification Numbers (*CIDs*), and any information about Cardmembers and Card transactions (collectively, *Cardmember Information*) are confidential and our sole property. Except as otherwise specified, neither Party shall disclose confidential Cardmember Information, nor use it other than to facilitate Card transactions in accordance with this Agreement. Should any services or marks supplied by us become or are likely to become the subject of a claim of infringement of a United States patent, copyright, trade secret or trademark, you shall permit us at our option and expense either to procure for you the right to continue using the service or mark or to replace or modify the same to become non-infringing.

(c) Representations and Warranties. Each party represents and warrants to the other party that: (i) it is duly qualified and licensed to do business in all jurisdictions in which it conducts business; (ii) it has full authority and all necessary assets and liquidity to perform its obligations and pay its debts hereunder as they become due; (iii) there is no circumstance threatened or pending that might have a material adverse effect on its business or its ability to perform its obligations or pay its debts hereunder; and (iv) the individual who signs this Agreement on behalf of a party has the authority to bind that party to this Agreement. Both Parties further represent and warrant that: (v) each is authorized to enter into this Agreement on behalf of its Establishments and Affiliates, including those indicated in this Agreement; (vi) it is not listed on the United States Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals List; (vii) it has not assigned to any third party any payments due to it under this Agreement; (viii) all information that it provided in connection with this Agreement is true, accurate, and complete; and (ix) it has read this Agreement and kept a copy for its file.

(d) Compliance with Laws. Each party will comply with all applicable laws, regulations, and rules.

(e) Governing Law; Jurisdiction; Venue. This Agreement is governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Each party agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all

matters. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

(f) Interpretation. In construing this Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term *or* is not exclusive; (iii) the term *including* means “including, but not limited to;” (iv) the term *day* means calendar day; (v) any reference to any agreement (including this Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; and (vi) all captions, headings, and similar terms are for reference only.

(g) Assignment. Neither party may assign this Agreement without prior written consent of the other party. We may not assign this Agreement or our obligations under it except as permitted by 09 NC Administrative Code 06B.1003. Notwithstanding anything to the contrary, each party may assign the Agreement to an Affiliate, provided such Affiliate is controlled by the undersigned or a holding company common to the undersigned and the Affiliate and the Affiliate is capable and willing to provide the same or substantially similar services to the other or Participating Entities under the same terms and conditions as agreed upon herein without consent. Except as otherwise specified herein, this Agreement binds and inures to the benefit of the parties and their respective successors and permitted assigns.

(h) Waiver; Cumulative Rights. Either party’s failure to exercise any of its rights under this Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, will not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights will constitute a waiver thereof. No waiver of any term of this Agreement will be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

(i) Savings Clause. If any term of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the balance of the Agreement remains unaffected.

(j) Amendments. Except as specifically indicated herein, any amendment to this Agreement must be in writing and duly signed by both parties.

(k) Entire Agreement. This Agreement is the entire agreement between you and us regarding the subject matter hereof and supersedes any previous agreements, understandings, or courses of dealing regarding the subject matter hereof.

(l) Counterparts and Facsimile Versions. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other party. This Agreement is effective upon delivery of one executed counterpart from each party to the other party.

(m) Equal Employment Opportunity. Each party shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, veterans and

concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.

- (n) Prohibition Against Contingent Fees and Gratuities: We warrant that:
- (i) we have not paid, and agree not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State of North Carolina for the purpose of obtaining any contract or award issued by the State of North Carolina;
 - (ii) no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State of North Carolina, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the contract or award in question;
 - (iii) no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Agreement as an inducement or consideration for making this Agreement; and
 - (iv) pursuant to N.C. Gen. Stat. § 147-33.100, this offer has not been arrived at collusively or otherwise in violation of federal or North Carolina law.

We agree that subsequent discovery by the State of North Carolina of non-compliance with these provision shall constitute sufficient cause for immediate termination of this Agreement.

- (o) Insurance Coverage. During the term of the Agreement, as a minimum we at our sole cost and expense shall maintain the following insurance coverage:
- (i) *Worker's Compensation* – We will provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of our employees who are engaged in any work under the Agreement. If any work is sublet, we shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Agreement; and
 - (ii) *Commercial General Liability* - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
 - (iii) *Automobile* - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Agreement. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.
 - (iv) Providing and maintaining adequate insurance is a material obligation of this Agreement. The limits of coverage under each insurance policy shall not be interpreted as limiting our liability and obligations under this Agreement.

- (p) Force Majeure. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

(q) Independent Contractors. We agree that our employees, officers and executives, and subcontractors, if any, shall be independent and are not employees or agents of the State of North Carolina. Both parties acknowledge and agree that this Agreement shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

(r) Availability of Funds. Any and all payments to us are expressly contingent upon and subject to the appropriation, allocation and availability of funds to you or a Participating Entity for the purposes set forth in this Agreement.

(s) Access to Persons and Records. Pursuant to N.C. General Statute 147-64.7, a Participating Entity, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all our books, records, and accounts insofar as those relate to transactions with any department, board, officer, commission, institution, or other Agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. We shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of the applicable transaction. Additional audit or reporting requirements may be required by any Participating Entity, if in the Participating Entity's opinion, such requirement is imposed by federal or state law or regulation.

23. Dispute Resolution. We and you agree that it is in our mutual interest to resolve disputes informally. A claim by us shall be submitted in writing to your Agency Contract Administrator for decision. A claim by you shall be submitted in writing to our Contract Administrator for decision. Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Agreement. If a dispute cannot be resolved between the Parties within forty-five (45) days after delivery of notice, either Party may elect to exercise any other remedies available under this Agreement or at law. This term shall not constitute an agreement by either Party to mediate or arbitrate any dispute. We understand that you cannot submit a dispute to binding arbitration. We agree that while matters are in dispute, we cannot automatically withdraw disputed amounts from your Settlement account, unilaterally terminate the Agreement or charge you additional fees or surcharges. Notwithstanding Exhibit A1, this paragraph 23 shall be the exclusive means of resolving disputes.

24. Limitation of Our Liability. Our liability for damages to the State for any cause whatsoever and regardless of the form of action, in contract shall be limited to two times the value to the Contract. In no event can you indemnify us and your liability as a sovereign is posited by N.C. Gen. Stat. § 143-299.2. We agree that you cannot agree to reimburse us for our costs and expenses, including reasonable attorney fees that we incur in enforcing our rights under your Agreement or our Operating Regulations.

25. Our Liability for Injury to Persons or Damage to property.

(a) We shall be liable for damages arising out of personal injury and/or damage to your real or tangible personal property, employees of the State, persons designated by the State for training or person(s) other than our agents or employees, designated by you for any purpose, provided the injury or damage was caused by our fault or negligence.

(b) We agree to indemnify, defend and hold you and your officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other persons, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of ordinary negligence, willful or wanton negligence or our intentional acts and the intentional acts of our officers, employees, agents, assigns or subcontractors in the performance of this Agreement.

26. Sovereign State. We understand that the State of North Carolina and its agencies are a sovereign state.

27. You shall provide us access to your annual certified annual financial report. We shall not demand any other financial information. We shall not require you to create a reserve account for any reason.

28. You and we must obtain prior written consent before either of us makes any disclosure to the public, whether in the form of a press release or otherwise. The content of any such disclosure must be mutually agreed upon before release.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

STATE OF NORTH CAROLINA

DFS SERVICES LLC

By: _____

By: _____

Robert L. Powell, State Controller

Gerard J. Wagner, Vice President

DATE: _____

DATE: _____

By: _____

Richard H. Moore, State Treasurer

DATE: _____